

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 93 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DAHAYABHAI PITHABHAI SOLANKI

Versus

P.G. SURYAVANSHI

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Appearance:

MR JITENDRA MALKAN for Petitioner  
NOTICE SERVED for Respondent No. 1  
NOTICE UNSERVED for Respondent No. 2  
MR RM CHHAYA for Respondent No. 3  
PUBLIC PROSECUTOR for Respondent No. 5

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 22/04/98

ORAL JUDGEMENT

1. Heard Mr.J.M.Malkan, Ld.advocate appearing for the petitioner. Rule. Ld.APP Mr.N.D.Gohil appears and waives service of rule on behalf of respondent Nos 1,2,4&5. Ld.Advocate Mr.R.M.Chhaya appears in response

to notice issued earlier on behalf of respondent No.3 and waives service of rule on behalf of respondent No.3. By consent of the parties matter is finally heard.

2. The petitioner has approached this court with a prayer claiming direction to respondent No.4 to register a case against respondent Nos 1,2&3 and also against other persons who may found responsible. It is further prayed that the investigation of such offence against respondent Nos 1,2 and 3 may be directed to other agency as the court deem fit and the petitioner be provided compensation from the respondents as deemed just.

3. According to petitioner, one Jyosnaben Lakhabhai Gulture of Surat had instituted Criminal Misc.Appln.No.56/95 in the court of JMFC, Surat claiming maintenance from the petitioner. That according to the petitioner respondent No.3 was cited as witness for the applicant-Jyosnaben. Further said Jyosnaben also moved an application for interim maintenance. However, vide order dated 6.10.97 the said application for maintenance was rejected by the court. That according to the petitioner said Jyosnaben is not legally wedded wife of the petitioner and on that ground the claim of Jyosnaben was rejected by the court.

4. It is alleged by the petitioner that the respondent No.3 happens to be the maternal uncle of said Jyosnaben, and thereby, in order to bring pressure on the petitioner to settle the alleged dispute with Jyosnaben the respondent No.3 through respondent Nos 1 & 2 caused harassment to the petitioner. According to petitioner the petitioner had visited Surat on 11.10.97 to attend religious rites on account of death of his maternal aunt. That there were more than 300 cast fellows and relatives of the petitioner were present at the said religious rites and one police constable had come there around 1130 a.m. and had taken the petitioner to Rani Talav Police chowky where the respondent No.1 was present. The petitioner has also alleged that at Rani Talav police chowky respondent No.1 threatened the petitioner to resolve the dispute with Jyosnaben or else he would have to travel from Ahmedabad to Surat, time and again, to attend the police station and that he would be involved in several police cases. That thereby the petitioner shall have to suffer monetary loss in his business. According to the petitioner as the petitioner did not agree to the suggestion made by the respondent No.1 to compromise the dispute with said Jyosnaben, the respondent No.1 threatened with dire consequences and ordered the Constable to take the petitioner to Chowk

Bazar Police Station and put him in lock-up. That it is averred by the petitioner that on enquiry from the constable the petitioner has come to know that the reason for such undue harassment by the respondent No.1 to the petitioner was on account of telephonic instructions given by the respondent No.3 to respondent No.1 so as to settle the dispute between Jyosnaben and the petitioner, any how. The petitioner has contended that the petitioner was humiliated on account of said incident as several cast fellows and relatives were present on that day.

5. It is also alleged and contended by the petitioner that when he was taken to Chowk Bazar police station the respondent No.1 had informed him that he would be taken into police custody on the basis of complaint made by one Bhanjibhai Naranbhai Bathwar. That the respondent No.1 agreed to release the petitioner from the said situation provided the petitioner should not leave the city of Surat till 13.10.97 and furnish two sureties so as to secure his presence at Surat till 13.10.97.

6. Petitioner has further alleged that on 13.10.97 the petitioner approached the respondent No.1 in the company of his lawyer Miss Sobhanaben Mehta and at that time the respondent No.1 tried to persuade his advocate said Sobhanaben to advise the petitioner for settlement of dispute for maintenance with Jyosnaben and also told that if the petitioner did not agree the proceedings under section 107 Cr.P.C. would be filed against him. It is alleged by the petitioner that though no offence was registered against the petitioner nor any proceedings were initiated under section 107 Cr.P.C. the petitioner was released on bail on furnishing bail on that day. It is the allegation of the petitioner that the respondent Nos 1 & 2 have committed said unlawful acts at the instance of respondent No.3 who wanted to resolve the dispute of his niece--Jyosnaben with the petitioner.

7. That the petitioner addressed a letter to the respondent No.4 on 14.10.97 about the above stated harassment caused by respondent Nos 1 & 2 by committing unlawful acts which amounts to various offences, and thereby, requested the respondent No.4 to take appropriate action and initiate proceedings against the respondent Nos 1 & 2. It is the case of the petitioner that on account of influence of respondent No.3 respondent No.4 has not taken any steps despite his receiving complaint and thereby the petitioner is constrained to approach this court for appropriate

relief.

8. The respondent Nos 1 & 2 have refuted the allegations made against them by the petitioner in the petition through affidavit filed by the respondent No.1 which is produced at page 22-28 of the record. Respondent No.1 has also produced annexures 1 to 5 on running pages 37-50. Respondent No.3 has also filed affidavit and has denied the allegations. Said affidavit is taken on record. Petitioner has filed rejoinder to the affidavit of respondent No.3 which is taken on record vide pages 51-56.

9. Ld.Advocate Mr.Malkan relying on the allegations made in the petition has submitted that the petitioner was subjected to undue humiliation and harassment by the respondent Nos 1 & 2 at the behest of respondent No.3 which amounts to violation of his fundamental rights. To support his submission Mr.Malkan has referred to and relied upon documents produced by way of annexures to affidavit of respondent No.1. Mr.Malkan has relied on the letter of the advocate produced vide page 44 which is addressed by Ms.Sobhanaben Mehta to Police Commissioner wherein facts were admitted that the petitioner was called to the police station on 13.10.97 and as such the petitioner had attended the police station on 13.10.97. That the respondent No.1 had asked the advocate for the petitioner-Ms.Sobhanaben Mehta to advise the petitioner to settle the dispute. It is further urged that according to said letter of Sobhanaben Mehta the respondent No.1, who is a police officer, had offered tea to the advocate. Said conduct discloses the guilty conscious of the respondent No.1 as the petitioner has approached to advocate. That the petitioner was put to great hardship without any lawful cause and as such respondent Nos 1, 2 & 3 should be dealt with in accordance with law.

10. Ld.APP, Mr.A.J.Desai and Advocate Mr.R.M.Chhaya appearing on behalf of respondent Nos 1,2&3 respectively have submitted that the respondent No. 1 & 2 have not committed any illegal act. That a report as produced at page 47 in respect to the actual incident has been sent and is on record of the police commissioner. That according to respondents one Bhanjibhai Naranbhai Bhatwar had filed a chapter case being Case No.226/97 against the present petitioner and the petitioner was called to the police station pursuant to said chapter case. That the respondent No.1 did not know about the religious rites on 11.10.97 as alleged by the petitioner. That the advocate--Sobhanaben has addressed a letter to the Police

Commissioner the contents of which support the averments made by the respondent No.1 in his affidavit. That the petitioner has exaggerated the allegations only with a view to involve the respondent No.3 and has made false allegations.

11. On the basis of above stated discussion I hold that the claim made by the petitioner in the present petition has no merit or substance on facts and as such the petitioner is not entitled to any relief as claimed in the petition. It may be noted that the present petition is not maintainable for the said relief on the ground that though the alternative efficacious civil as well as criminal remedy was available to the petitioner the petitioner has failed to resort to same and has filed present petition.

12. On the basis of above stated discussion petition fails and stands disposed of as rejected. Rule is discharged. No costs.

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